No. 21,745

In the United States Court of Appeals for the Ninth Circuit

SIGNAL OIL AND GAS COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review and Set Aside and on Cross-Petition for Enforcement of an Order of the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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INDEX

AUTHORITIES CITED

Cases:

Cases—Continued Page

Statute: Page

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon the petition of the Signal Oil and Gas Company (hereinafter petitioner or Company), to review and set aside an order of the National Labor Relations Board issued against petitioner on August 24, 1966, pursuant to Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*). In its answer, the Board has cross-petition-

ed for enforcement of its order. The Board's Decision and Order (R. 11-25, 30-31)[1] are reported at 160 NLRB No. 51. This Court has jurisdiction over the proceeding under Section 10(e) and (f) of the Act, the unfair labor practices having occurred at Bakersfield, California, where the Company operates a petroleum refinery.

COUNTERSTATEMENT OF THE CASE

I. The Board's Findings of Fact

The Board found that petitioner discriminatorily discharged employee Louis Evans, in violation of Section 8(a)(3) and (1) of the Act. The facts on which the Board's findings rest are summarized below.

The refinery employees at petitioner's Bakersfield facility are represented by the Oil, Chemical and Atomic Workers International Union, AFL-CIO, Local 1-19. In September 1965, the contract between the Oil Workers Union and the Company was about to expire, and negotiations were under way for a new agreement (R. 13; Tr. 13, 25). At that time, in addition to refinery workers, petitioner employed at Bakersfield nine truckdrivers, who delivered oil products to local retail outlets, and an unspecified number

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[1] References to the pleadings reproduced as "Volume I, Pleadings" are designated "R." References to the stenographic transcript of the hearing reproduced pursuant to Court Rule 10 are designated "Tr." References to the General Counsel's exhibits and to petitioner's exhibits are designated "G.C. Exh." and "P. Exh.," respectively. Whenever a semicolon appears, references preceding the semicolon are to the Board's findings; those following are to the supporting evidence.

of pipeline employees (R. 13; Tr. 12, 16, 25-26, 32, 33, 79). Neither the truckdrivers nor the pipeline employees were represented by any labor organization (R. 13; Tr. 8-10, 33).[2]

On September 24, 1965, employee Louis Evans, a truckdriver, was in petitioner's dispatching office at Bakersfield. In the presence of Fred Brown, the dispatcher and Evans' immediate supervisor, Evans engaged in a conversation with Walt Bright, a pipeline employee with whom he was acquainted (R. 13; Tr. 13-15, 79, 91). Bright asked Evans "what [he] thought of the refinery's voting a union strike." Evans replied, "good, good, I hope they do," but added, "It is possible that they couldn't go on strike because it would deadlock California" (R. 13; Tr. 15). Dispatcher Brown then said, "Well, if they go on strike, you will be out of work" (R. 13; Tr. 16-17). That ended the conversation (Tr. 17). Later the same day, Brown telephoned his superior, Malcomb Dawson, and told Dawson of Evans' remarks to Bright (R. 14; Tr. 78-79, 86). Dawson was manager of marketing transportation and his office was located at Company headquarters in Los Angeles (R. 12; Tr. 77-78). According to Dawson, Brown quoted Evans as having said, "I hope they do [strike], maybe it

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[2] Prior to 1962, however, the truckdrivers had been represented by Teamsters, Chauffeurs, Warehousemen & Helpers, Local 87. During that year, both the Teamsters and Oil Workers Unions participated in a Board conducted election for representation of the drivers, but neither won a majority (R. 13; Tr. 8-10).

will teach this cheap company something"[3] (R. 14; Tr. 79).

During the following week, Dawson reported the conversation between Evans and Bright, as it had been related to him by Brown, to James Rasbury, manager of petitioner's Employment Relations Department (R. 14; 35, 71, 86-87). At the time, neither Dawson nor Rasbury discussed the possibility of any future action with respect to Evans (R. 14; 82, 87-88). However, on September 28 or 29, Rasbury and Dawson met with H. J. Stroud, the Company's vice-president in charge of employee relations, to discuss a personnel problem unrelated to Evans (R. 14; 37, 83). When they had concluded that discussion, Rasbury asked Dawson to relate to Stroud the substance of the report about Evans (R. 14; 37, 71, 87-88). After Dawson did so, Stroud said that Evans' "remark in and of itself is not worthy of discharge, but I would like to see what kind of employee we have on our hands" (R. 14; Tr. 38, 71). At Stroud's request, Rasbury obtained Evans' personnel file and reviewed Evans' record for Stroud (R. 14-15; 38, 71).

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[3] Neither Brown nor Bright testified concerning Evans' remarks on September 24. Dawson was not present when these remarks were made and his testimony therefore indicates only what he was told by Brown. The Trial Examiner noted that there was "no significant difference between the versions [of Dawson and Evans]. At the most, Dawson's version contains a more unflattering reference to Respondent [the Company], but the main thrust of both versions is an expression of hope by Evans that Respondent might be subjected to strike action by a group of employees with whom Evans was not directly involved" (R. 15).

Stroud then decided that Evans should be discharged (R. 15; Tr. 40, 75-76). Accordingly, on September 30, 1964, when Evans reported to the dispatcher's office in Bakersfield, he was told by dispatcher Brown that he was terminated and given a termination slip prepared by Brown, which stated, "Generally an unsatisfactory employee. Poor attitude. I feel that both the Company and the employee will be better off if he is terminated" (R. 15-16; Tr. 17-18, 48; P. Exh. 3). Evans was not satisfied with this explanation, and later that day telephoned Dawson, Brown's superior, to discuss his discharge (R. 16; Tr. 19-20). Dawson explained that Brown had reported Evans' remarks concerning the strike, that there had been a discussion with higher Company officials, and that it had been decided that Evans' continued employment would not be good for the Company or Evans (R. 16; Tr. 20-22). Dawson also queried Evans about "the conversation with Bright" and asserted that when Brown had said in reference to the contemplated strike, "Well, we might lose both our jobs," Evans had replied that he did not care (R. 16; Tr. 88-89). Dawson advised Evans that "the attitude that you have is not good for you or for the Company and therefore we are letting you go" (R. 16; Tr. 88). When Evans asked whether his discharge was final, Dawson stated, "It is final, it came from upstairs. We decided in the meeting and it is final." (Tr. 89).

II. The Board's Conclusions and Order

On the basis of the foregoing, the Board found, in agreement with the Trial Examiner, that "Evans

was discharged because he expressed himself in sympathy with, and in support of, the strike activity of his fellow employees, that by engaging in such conduct, he was engaging in activity protected by the statute, and that his discharge, therefore, was violative of both Section 8(a)(1) and (3) of the Act" (R. 20, 30). The Board's order requires petitioner to cease and desist from the unlawful conduct found, offer Evans reinstatement and backpay, and post appropriate notices (R. 23-24, 30-31).

ARGUMENT

Substantial Evidence on the Record as a Whole Supports the Board's Conclusion That Petitioner Discharged Evans in Violation of Section 8(a)(3) and (1) of the Act

It is settled that Section 7 of the Act guarantees to employees the right, *inter alia*, "to self organization, to form, join, or assist labor organizations . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ." and that employees who engage in such activity are protected against discharge or other disciplinary action by Section 8(a)(3) and (1) of the Act. *E.g. N.L.R.B.* v. *Washington Aluminum Co.*, 370 U.S. 9, 14; *N.L.R.B.* v. *Jones & Laughlin Steel Co.*, 301 U.S. 1; *N.L.R.B.* v. *Victory Plating Works, Inc.*, 325 F. 2d 92 (C.A. 9); *San Antionio Machine & Supply Co.* v. *N.L.R.B.*, 363 F. 2d 633, 635, 642 (C.A. 5); *N.L.R.B.* v. *Fairmont Creamery, Inc.*, 143 F. 2d 668, 672 (C.A. 10), cert. denied 323 U.S. 752; *N.L.R.B.* v. *Osbrink*, 218 F. 2d 341, 342-343 (C.A.

9), cert. denied 349 U.S. 928; see *Radio Officers Union* v. *N.L.R.B.*, 347 U.S. 17. As we show below, the record in the instant case amply supports the Board's conclusion that Evans was discharged because he expressed agreement with the refinery workers' strike and, accordingly, that the Board was warranted in concluding that the Company's discharge of Evans for engaging in this protected concerted activity was violative of the Act.

It is undisputed that shortly before the discharge of Evans, officials of petitioner learned of a conversation between Evans and employee Bright, in which Evans said that he approved of the strike vote taken by the refinery workers at petitioner's plant and hoped that a strike against the Company would occur (p. 3, *supra*). That petitioner attached importance to Evans' remarks and did not regard the incident as casual is shown not only by the "process of escalation" (R. 19) in which the report of these remarks was conveyed from one supervisory level to the next, but also by the reaction of the senior Company official who finally made the decision to fire Evans. Thus, Brown, a dispatcher and Evans' immediate superior, reported the conversation to Dawson, manager of marketing transportation. Dawson, in turn, relayed the report to Rasbury, manager of the employment relations department. Rasbury then brought the matter to the attention of Stroud, vice-president in charge of employee relations who, upon hearing it, said he "would like to see what kind of employee we have on our hands" (p. 4, *supra*). The decision to discharge Evans was made shortly thereafter. Evans had been

employed by petitioner for nine years (R. 13; Tr. 11), and there is no evidence that the Company was planning to terminate him before it learned of his conversation with Bright (R. 15).

A reasonable inference from these facts, and particularly the juxtaposition of events, is that Evans was fired because of his remarks, and that he would not have been discharged had he remained silent. Cf. *N.L.R.B.* v. *Tonkin*, 352 F. 2d 509, 511 (C.A. 9); see *N.L.R.B.* v. *Putnam Tool Co.*, 290 F. 2d 663, 665 (C.A. 6). Petitioner, however, insists that the remarks merely resulted in an inquiry into Evans' suitability as an employee, and that this inquiry revealed information furnishing grounds for discharge. Yet all that the Company did by way of inquiry was to examine Evans' personnel file and thus review the same matters which apparently had not been sufficient to cause the Company to discharge Evans up to that time. The only additional information concerning Evans considered by the Company at this point was Evans' recently expressed attitude towards the concerted activities of his fellow employees. Accordingly, the Board could reasonably reject petitioner's explanation that Evans was discharged on the basis of his record, and could conclude instead that the true moving cause for Evans' termination was that he openly voiced his opinion in favor of the proposed strike against the Company. Cf. *N.L.R.B.* v. *Mrak Coal Co.*, 322 F. 2d 311 (C.A. 9); *N.L.R.B.* v. *Texas Independent Oil Co.*, 232 F. 2d 447, 450 (C.A. 9).[4]

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[4] Petitioner suggests (Br. p. 5) that "lack of work" was "an additional fact . . . . which entered into the decision to

Nor can petitioner justify its action by asserting that good cause for Evans' discharge existed. The issue in this case is not whether there were adequate grounds for discharge, but rather whether these grounds were, in fact, the real reason for discharge. *Wonder State Manufacturing Co.* v. *N.L.R.B.*, 331 F. 2d 737, 738 (C.A. 6); *N.L.R.B.* v. *Symons Mfg. Co.*, 328 F. 2d 835, 837 (C.A. 7). Indeed, as the Second Circuit has held, "even though the discharges may have been based on other reasons as well, if the employer was partly motivated by union activity, the discharges . . . [were] violative of the Act." *N.L.R.B.* v. *Great Eastern Lithographic Corp.*, 309 F. 2d 352, 355 (C.A. 2), cert. denied 373 U.S. 950. To be sure there are instances where an employer asserts and establishes the existence of non-discriminatory reasons for an employee's discharge which are sufficiently compelling to render unreasonable any inference of unlawful motivation based on the other evidence in the record. Compare *Magnolia Petroleum Co.* v. *N.L.R.B.*, 200 F. 2d 148 (C.A. 5) with *Frosty Morn Meats, Inc.* v. *N.L.R.B.*, 296 F. 2d 617, 620-621 (C.A. 5). That, however, was not the situation in the instant case, as can be seen by analyzing the specific reasons assigned by petitioner for Evans' discharge. Thus, petitioner stated that, based on the observation of an unnamed employee, Evans was suspected of taking Company

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discharge [Evans]." As the Board found, however, there was "no showing . . . that [petitioner] was actively considering termination of any of the drivers at that time as a result of slack work" (R. 15).

gasoline for his own use. No further particulars were given by petitioner, and personnel manager Rasbury candidly admitted that the Company's investigation into this matter "was not conclusive" (Tr. 38). Petitioner also alleged that it had "pretty good evidence" at the time Evans was fired that he had filed a "fraudulent" claim under the Company's group health insurance plan for payment of his wife's medical expenses (Tr. 38-39). In fact, the claim for Mrs. Evans' expenses had been received in June 1965, but petitioner did not bother to check the accuracy of the statements thereon until November 1965, after Evans had been terminated (Tr. 44-45; 53; P. Exh. 2-b). Thus, as Rasbury acknowledged at the hearing, petitioner did not really know whether Evans' claim was improper when it discharged him in the latter part of September 1965 (Tr. 58).[5] Significantly, nothing was said to Evans by Company officials at the time of his discharge about the alleged theft of gasoline or the insurance claim. Evans was told only that he was "generally an unsatisfactory employee" and that his "attitude" was poor. The basis for the latter, as testified to by personnel manager Rasbury, was that "we had numerous complaints . . . [that Evans] . . . was a constant griper, complainer" (Tr. 38). Yet, since

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[5] The somewhat different issue of whether Evans, in fact, filed a claim he knew to be false was not fully litigated at the hearing in this case, and therefore the Trial Examiner correctly limited himself to a finding, plainly supported by the evidence in the record, that the file reviewed by petitioner *at the time of Evans' discharge* "did not conclusively establish Evans' responsibility . . . for the fraudulent character of the claim" (R. 14-15).

Rasbury also described these complaints as "vague, generalities" and specified few details concerning them (Tr. 38), the Company could hardly have attached particular importance to them. Apparently what was of greater concern to the Company with respect to Evans' attitude were the views he expressed during his conversation with Bright and supervisor Brown. Indeed, that conversation was the only specific incident referred to by Dawson in response to Evans' questions about the reasons for his discharge (p. 5, *supra*).

As the foregoing indicates, the reasons assigned by petitioner for Evans' discharge are scarcely compelling. And since, as we have shown, there was other persuasive evidence in the record from which the Board could reasonably infer that Evans' remarks to Bright were the actual moving cause of his discharge, the Board's conclusion is entitled to affirmance by the Court.[6]

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[6] Petitioner would read the Board's decision as holding that Evans' discharge was unlawful solely because Evans' statement concerning the proposed strike prompted Company officials to investigate and evaluate his desirability as an employee. Thus, petitioner complains that the Board erred by ignoring the actual reasons for Evans' discharge as allegedly developed by the Company's inquiry. In fact, however, the Trial Examiner specifically stated in his decision:

> Accordingly, I find that Evans was discharged because he expressed himself as in sympathy with, and in support of, the strike activity of his fellow employees . . . (R. 19-20)

While it is true that in arriving at this finding, the Examiner pointed out the cause and effect relationship between Evans' comment and petitioner's subsequent investigation of

Petitioner further urges that even if it did discharge Evans because of his remarks to Bright, Evans' statements did not "look toward group action," and hence were not protected by the Act. In the event, however, that the refinery workers struck against petitioner, as they had voted to do, unrepresented employees such as Evans and Bright were likely to be asked to participate in group action with the strikers by refusing to cross picket lines, perhaps even by joining the picket lines, and by providing such moral and material support to their co-workers as they were able. Assistance of this sort would be activity clearly protected by Section 7 of the Act. *N.L.R.B.* v. *West Coast Casket Co.*, 205 F. 2d 902, 905 (C.A. 9); *N.L.R.B.* v. *City Yellow Cab Co.*, 344 F. 2d 575, 582 (C.A. 6); *Truckdrivers Union Local No. 413* v. *N.L.R.B.*, 334 F. 2d 539, 542-543 (C.A. D.C.); cert. denied 379 U.S. 916; *N.L.R.B.* v. *Rockaway News Supply Co.*, 197 F. 2d 111, 113 (C.A. 2), aff'd on other grounds 345 U.S. 71. As the Trial Examiner reasoned (R. 19):

> Although the remark on its face, is somewhat mild in nature, I can only regard it as an expres-

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Evans' record, nowhere in his decision did the Examiner suggest that the reasons offered by the Company were indeed the real motive for Evans' discharge. On the contrary, the Examiner, in effect, used the connection between Evans' remarks and the investigation to emphasize the strong probability that an employer who combs through an employee's record as a result of learning that the employee is sympathetic towards union activity is merely looking for a suitable pretext to discharge that employee.

> sion of sympathy and support by Evans for a group of his fellow employees who had announced that they might undertake collective action in support of demands they are making against their employer. In effect, Evans expressed common cause with the refinery employees in furtherance of their strike, even though he was not a part of the refinery group, and even though the strike would have the undoubted effect of putting him out of work. In one sense, the remark may not be a call to concerted action, but it does express support by Evans of such action by his fellow employees in another unit. Striking employees seek all the support they can get. When fellow employees not directly involved in the strike, but affected by it, express support, they often do so in the hope of reciprocal support at a later time. Thus, Evans' remark may be regarded as an expression of support for the proposed union activity of his fellow employees, made in anticipation that he or his group might receive similar support should the occasion arise. I find this to be a form of protected activity for his own aid and protection, as well as an expression of support for a labor organization of his fellow employees.

Accord: *N.L.R.B.* v. *Peter Cailler Kohler Swiss Chocolates Co.*, 130 F. 2d 503, 505-506 (C.A. 2 per L. Hand, J.)

Moreover, the test under the Act of whether a discharge is unlawful is not whether the discharged employee actually contemplates participating in or is a participant in union activity, as petitioner seems to suggest. *Salt River Valley Water Ass'n* v. *N.L.R.B.*, 206 F. 2d 325 (C.A. 9); see *N.L.R.B.* v. *Washington Aluminum Co.*, 370 U.S. 9. Rather it is whether the

employer's conduct under the circumstances reasonably tends "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7" (Section 8(a)(1)), or constitutes "discrimination in regard to hire or tenure of employment . . . to encourage or discourage membership in any labor organization" (Section 8(a)(3)). When an employer fires or refuses to hire an individual because he believes that individual is sympathetic to unions in general or has expressed support for the activities of a particular union, as Evans did here, other employees, as well as the employee discriminated against, will be discouraged from joining a union and otherwise restrained in the exercise of their Section 7 rights. Indeed, this Court long ago recognized that "a discharge of a non-union employee because of . . . a belief that he was sympathetic to . . . a union violates Section 8(a)(1) and (3) . . ." *N.L.R.B.* v. *J.G. Boswell Co.*, 136 F. 2d 585, 594-596 (C.A. 9). It is immaterial that the union activity which aroused the discharged employee's sympathy or support "extends outside his own employment . . ."[7] *Ibid.* Nor is it necessary to establish through independent evidence that the discharge discouraged membership in a labor organization or that the employer intended it to do so. For discrimination against an employee believed to be sympathetic towards union activity necessarily has that result and is *ipso facto* a violation of Section 8(a)(3). *Ibid.*

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[7] See *Houston Insulation Contractors* v. *N.L.R.B.*, 386 U.S. 664, 668, 669; *N.L.R.B.* v. *Peter Cailler Kohler Swiss Chocolates Co.*, 130 F. 2d 503, 505 (C.A. 2); *Fort Wayne Corrugated Paper Co.* v. *N.L.R.B.*, 111 F. 2d 869, 873-874 (C.A. 7).

In the instant case, the discharge of Evans for merely stating that he favored the proposed strike would inevitably operate as a deterrent to petitioner's unrepresented employees who might otherwise be willing to assist the strikers. Furthermore, inasmuch as the Oil Workers Union had previously tried without success to become the bargaining agent for petitioner's truckdrivers (p. 3 n. 2, *supra*), it is not unreasonable to assume that another such attempt would be made to recruit the drivers. The example of Evans—a truckdriver fired by petitioner for speaking out in support of the Oil Workers—would be likely to cause reluctance on the part of the other drivers to join this Union and would generally have a chilling effect on any organizational efforts among petitioner's non-union employees.

Petitioner (Br. 12-13) seeks to analogize this case to such cases as *Mushroom Transportation Co., Inc.* v. *N.L.R.B.*, 330 F. 2d 683 (C.A. 3); *N.L.R.B.* v. *Texas Natural Gasoline Corp.*, 253 F. 2d 322 (C.A. 5), *Continental Manufacturing Co.*, 155 NLRB 255, and *General Electric Co.*, 155 NLRB 208. The analogy is inapposite. In each of those cases, the conduct for which the employee was discharged did not occur in a context of protected concerted activity, whereas here, Evans' expression of approval of the strike vote of his fellow employees pointedly referred to concerted activity already under way, and thus clearly bore "some relation to group action in the interest of the employees." *Mushroom Transportation Co.*, *supra*, 330 F. 2d at 685. Even if Evans was not then directly associated with such activity, it would

be an incongruous application of the Act to hold that an employee cannot be lawfully discharged for participating in concerted activity, yet that he may be discharged for expressing approval of the concerted activities of his co-workers. As a practical matter, it can hardly be expected that employees will appreciate the subtlety of such a distinction, and will not be intimidated when one of their number is fired, as Evans was here.

In sum, we submit that the record fully warrants the Board in concluding that Evans was discharged because of his protected concerted activities and that a discharge in such circumstances violates Section 8 (a) (3) and (1) of the Act.[8]

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[8] Assuming *arguendo* that Evans' discharge would not violate Section 8(a) (3) of the Act, there is still a violation of Section 8(a) (1) here. For, as we have shown, Evans' remark must be considered a form of activity for "other mutual aid or protection" within the meaning of Section 7 of the Act. Thus, even if it could be said that Evans' discharge as a result of his remark to Bright would not tend to discourage membership in a labor organization in violation of Section 8(a) (3), it still constitutes interference, restraint and coercion of employee activity protected by Section 7 and thereby violates Section 8(a) (1) of the Act. *Pacific Electricord Co.* v. *N.L.R.B.*, 361 F. 2d 310 (C.A. 9).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that a decree should issue denying the petition to review and enforcing the Board's order in full.

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October 1967.

CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18, 19 and 39 of this Court and in his opinion the tendered brief conforms to all requirements.

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APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151 *et seq.*) are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Unfair Labor Practices

Sec. 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this

Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9 (e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

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